

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS**

ANDREW CORZO, SIA HENRY,
ALEXANDER LEO-GUERRA, MICHAEL
MAERLENDER, BRANDON PIYEVSKY,
BENJAMIN SHUMATE, BRITTANY
TATIANA WEAVER, and CAMERON
WILLIAMS, individually and on behalf of all
others similarly situated,

Plaintiffs,

v.

BROWN UNIVERSITY, CALIFORNIA
INSTITUTE OF TECHNOLOGY,
UNIVERSITY OF CHICAGO, THE TRUSTEES
OF COLUMBIA UNIVERSITY IN THE CITY
OF NEW YORK, CORNELL UNIVERSITY,
TRUSTEES OF DARTMOUTH COLLEGE,
DUKE UNIVERSITY, EMORY UNIVERSITY,
GEORGETOWN UNIVERSITY, THE JOHNS
HOPKINS UNIVERSITY, MASSACHUSETTS
INSTITUTE OF TECHNOLOGY,
NORTHWESTERN UNIVERSITY,
UNIVERSITY OF NOTRE DAME DU LAC,
THE TRUSTEES OF THE UNIVERSITY OF
PENNSYLVANIA, WILLIAM MARSH RICE
UNIVERSITY, VANDERBILT UNIVERSITY,
and YALE UNIVERSITY,

Defendants.

Case No. 1:22-cv-00125

Hon. Matthew F. Kennelly

**JOINT DECLARATION OF ROBERT D. GILBERT, EDWARD NORMAND,
AND ERIC L. CRAMER IN SUPPORT OF PRELIMINARY APPROVAL OF
SETTLEMENTS WITH DEFENDANTS TRUSTEES OF DARTMOUTH COLLEGE,
NORTHWESTERN UNIVERSITY, WILLIAM MARSH RICE UNIVERSITY, AND
VANDERBILT UNIVERSITY, PROVISIONAL CERTIFICATION OF THE PROPOSED
SETTLEMENT CLASS, APPROVAL OF THE REVISED NOTICE PLAN, AND
APPROVAL OF THE SCHEDULE FOR COMPLETING THE SETTLEMENT PROCESS**

Pursuant to 28 U.S.C. §1746, we, Eric L. Cramer, Robert D. Gilbert, and Edward Normand jointly declare:

1. We are, respectively, shareholders or partners of the law firms of Berger Montague PC (“Berger Montague”), Gilbert Litigators and Counselors (“GLC”), and Freedman Normand Friedland LLP (“FNF”) (together, “Settlement Class Counsel”). We have been actively involved in investigating, initiating, and prosecuting this matter from the outset. On September 9, 2023, the Court preliminarily approved the Plaintiffs’ proposed class settlement with defendant University of Chicago. *See* ECF No. 439 (“University of Chicago Preliminary Approval Order”). On January 23, 2024, Plaintiffs moved for preliminary approval of settlement agreements with five Defendants: Brown University (“Brown”); The Trustees of Columbia University in the City of New York (“Columbia”); Duke University (“Duke”); Emory University (“Emory”); and Yale University (“Yale”) (these settling defendants collectively, the “Second Tranche Settling Universities” or “Second Tranche Settling Defendants;” and these settlements, the “Second Tranche Settlements”). *See* ECF No. 603. The Court preliminarily approved the Second Tranche Settlements on February 14, 2024. *See* ECF No. 614.

2. Plaintiffs now seek preliminary approval of four additional executed settlements with Trustees of Dartmouth College (“Dartmouth”); Northwestern University (“Northwestern”); William Marsh Rice University (“Rice”); and Vanderbilt University (“Vanderbilt”) (these settling defendants collectively, the “Third Tranche Settling Universities” or “Third Tranche Settling Defendants;” and these settlements, the “Third Tranche Settlements”). We are familiar with all of these proceedings and have personal knowledge of the matters set forth herein. If called upon and sworn as witnesses, we would be competent to testify thereto.

3. For efficiency purposes, Plaintiffs are requesting that the Court authorize a

consolidated approval process for all settlements reached to date, including: (i) the University of Chicago Settlement; (ii) the Second Tranche Settlements; and (iii) the Third Tranche Settlements (collectively, the “Settlements” and “Settling Defendants” or “Settling Universities”).

4. Unless otherwise defined herein, all capitalized terms have the same meanings set forth in the settlement agreements with Third Tranche Settling Defendants (collectively referred to as the “Settlement Agreements”), which are attached hereto at Exhibits 8-11. Because each Settlement Agreement is structured with the same format, citations to the Settlement Agreements will use the singular form. Any citations unique to a specific Settlement Agreement will be expressly noted.

5. We respectfully submit this Declaration in Support of the Motion for Preliminary Approval of Settlements with Defendants Dartmouth, Northwestern, Rice, and Vanderbilt, Provisional Certification of the Proposed Settlement Class, Approval of the Revised Notice Plan, and Approval of the Schedule for Completing the Settlement Process.

6. The Third Tranche Settling Universities have agreed to make the following payments to Plaintiffs and the Settlement Class:

- Dartmouth: \$33.75 million.
- Rice: \$33.75 million.
- Northwestern: \$43.5 million.
- Vanderbilt: \$55 million.

7. These additional settlements collectively amount to \$166 million, and with the Second Tranche Settlements and the University of Chicago Settlement (\$118 million), the ten Settlements total \$284 million in aggregate cash payments for the benefit of the Settlement Class.

8. The Third Tranche Settlement Agreements are substantially similar to the Second Tranche Settlement Agreements in form and substance—except that the settlement amount in each of these Agreements exceeds all prior settlement amounts. Settlement Class Counsel believe these Third Tranche Settlements are fair, reasonable and adequate for the same reasons articulated in the January 23, 2024 Joint Declaration. ECF No. 603-2. Because Plaintiffs rely on the same facts to support the motion for preliminary approval of the Third Tranche Settlements, and to reduce duplication, Settlement Class Counsel adopt and incorporate by reference the entirety of the January 23, 2024 Joint Declaration, and supplement below to provide additional information specific to the Third Tranche Settlements.

THE THIRD TRANCHE SETTLEMENTS

9. Settlement Class Counsel—over the course of several months—pursued, negotiated, and subsequently executed separate Settlement Agreements with each of the Third Tranche Settling Defendants. *See Exhibits 8-11.*

10. Each Settlement Agreement with the Third Tranche Settling Defendants provides for the Third Tranche Settling Defendant to make a cash payment to Plaintiffs and the proposed Settlement Class (which Class includes approximately 200,000 members), and to provide continuing discovery obligations. *See, e.g., Ex. 8 ¶¶ 7, 20.* The amount of each Third Tranche Settling Defendant's cash payment is listed above at Paragraph 6. The four Third Tranche Settlements collectively amount to \$166 million. As noted above, all ten Settlements achieved to date total \$284 million in aggregate cash payments for the benefit of the Settlement Class.

11. Over a period of roughly 16 weeks, involving extensive arm's length negotiations, Plaintiffs reached settlements in principle with the Second and Third Tranche Settling Defendants, and then formal Settlement Agreements with each. For some of the Third Tranche Settlements, agreement was achieved with the able assistance of renowned mediator, former U.S.

District Court Judge Layn Phillips and his colleagues Miles Ruthberg and Clay Cogman at Phillips ADR.

12. The Second and Third Tranche Settlement Agreements were not achieved as a group or all at once, but instead were separately pursued over the course of time, with negotiations going on simultaneously. Settlement Class Counsel pursued a strategy of increasing the settlement amounts with each successive agreement or set of agreements to exert pressure on non-settling Defendants¹ to reach agreement imminently or risk having to pay significantly more by waiting. Across the Second and Third Tranche Settlements, the first settlements reached were for \$18.5 million (Emory and Yale) and the last settlement reached was for \$55 million (Vanderbilt). Further, all of the Third Tranche Settlements include payment amounts that are greater than the highest payment from a Second Tranche Settling Defendant (*i.e.*, higher than Columbia and Duke, which were \$24 million each).

13. Moreover, under the Settlement Agreements, each Third Tranche Settling Defendant has agreed to engage in certain important continued discovery obligations, tailored to the needs of the Plaintiffs with regard to each Settling Defendant individually. *See Dartmouth Settlement ¶ 20; Northwestern Settlement ¶ 20; Rice Settlement ¶ 20; Vanderbilt Settlement ¶ 20.* Like with Second Tranche Settling Universities, Third Tranche Settling Universities agreed to: (a) work in good faith to resolve unanswered questions regarding their respective data productions; (b) consider reasonable requests to produce additional relevant information, including documents, regarding undergraduate financial aid and the 568 Group; (c) facilitate witness interviews with agreed-upon individuals; and (d) facilitate authentication of certain documents produced in discovery. *Id.*

¹ “Defendants” is defined in each Settlement Agreement at pp. 1-2.

14. Each Settlement Agreement provides that if more than 650 proposed Class Members opt-out of the Settlement in a timely fashion, the Third Tranche Settling Defendant would have the right to terminate the Settlement Agreement. *See, e.g.*, Exhibit 8, ¶ 16.

15. The Custodian/Escrow Agreement for Third Tranche of Settlements (“Feb. 21, 2024 Escrow Agreement”) is attached hereto as Exhibit 12. Plaintiffs request that Huntington Bank be appointed as Escrow Agent for the Third Tranche Settlements. The Court previously approved Huntington Bank as the Escrow Agent for the prior Settlements. *See* University of Chicago Preliminary Approval Order ¶ 9 (ECF No. 439); Second Tranche Settlements Preliminary Approval Order ¶ 11 (ECF No. 614).

16. We know of no separate agreements or conflicts that would affect the settlement amounts, the eligibility of Settlement Class Members to participate in the Settlements, or the treatment of Settlement Class Members’ claims.

CONSOLIDATED NOTICE AND ADMINISTRATION OF ALL SETTLEMENTS

17. Settlement Class Counsel propose a consolidated notice program for the Settlements. Under a consolidated approach, one schedule will be used to manage the notice and settlement administration steps through final approval and the distribution of the net settlement funds for the University of Chicago Settlement, the Second Tranche Settlements, and the Third Tranche Settlements. This approach will be efficient and straightforward for Settlement Class members.

18. Plaintiffs propose that notice to the Settlement Class proceed pursuant to the Revised Notice Plan (ECF No. 603-10), but using the proposed amended notices attached to the Declaration of Steven Weisbrot, Esq. of Angeion Group LLC re Amending the Proposed Revised Notice Plan for the Third Tranche Settlements (“Feb. 20, 2024 Weisbrot Decl.”), at Exs.

A & B. The amended summary and long-form class notices are identical to the versions submitted with the Revised Notice Plan (filed with the Second Tranche Settlements), except for identifying the Third Tranche Settlements and their relevant details. *Compare* ECF No. 603-11 (Revised Summary Notice) & ECF No. 603-12 (Revised Long-Form Notice) *with* Feb. 20, 2024 Weisbrot Decl. Exs. A (Amended Summary Notice) & B (Amended Long-Form Notice).

19. For a consolidated notice program to proceed efficiently and without confusing Class members, Plaintiffs request two additional changes: (i) all Settlements will follow the schedule set forth in the preliminary approval order for the Third Tranche Settlements; and (ii) the end of the Class Period for the proposed Settlement Class for the Second Tranche Settlements and the University of Chicago Settlement shall be the date of preliminary approval for the Third Tranche Settlements (*i.e.*, setting the same Class Period for the Settlement Class across all Settlements).

Dated: February 23, 2024

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

/s/ Robert D. Gilbert
Robert D. Gilbert
**GILBERT LITIGATORS &
COUNSELORS**
11 Broadway, Suite 615 New York, NY
10004 Tel: (646) 448-5269
rgilbert@gilbertlitigators.com

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

s/ Edward Normand
Edward Normand (*pro hac vice*)
FREEDMAN NORMAND
FRIEDLAND LLP
99 Park Ave., 1910 New York, NY
10016 Tel: (646) 350-0527
ted@fnf.law

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

/s/ Eric L. Cramer
Eric L. Cramer (*pro hac vice*)
BERGER MONTAGUE PC
1818 Market Street, Suite 3600
Philadelphia, PA 19106
Tel: (215) 875-3000
ecramer@bm.net